

Meeting Summary
Maine Citizen Trade Policy Commission
November 3, 2011
Washington County Community College
Calais, Maine

Present: Senator Sherman, Representative Maker, Senator Martin, Senator Patrick, Representative Rotundo, Deputy Attorney General Linda Pistner, Wade Merritt, Connie Jones, Stephen Cole, Joseph Woodbury, Michael Roland, John Palmer, Harry Ricker, Jay Wadleigh

Senator Sherman and Representative Maker made some opening remarks to start the meeting and asked Commission members to introduce themselves.

State Consultation with the United States Trade Representative (USTR)

The first item on the agenda was a joint presentation regarding state consultation with the United States Trade Representative and how Maine can have more direct consultation on trade issues.

Presenters: Rep. Rotundo, Rep. Sharon Treat, Wade Merritt

Rep. Rotundo:

Representative Rotundo provided a historical perspective on the CTPC and its past efforts to be heard by and successfully communicate with the USTR regarding the development, negotiation and ratification of international trade agreements.

An early effort was made by the commission to ensure communication to designate a single point of contact for the USTR. The Maine International Trade volunteered and was welcomed by the CTPC to be the contact point. Despite the promising concept of a single point of contact in Maine, in practice, that system has not worked very well for a variety of reasons

Representative Rotundo cited another conduit for communication with the USTR available to Maine, a group called IGPAC (Intergovernmental Policy Advisory Commission). This group, within the office of the USTR, advises the USTR concerning trade matters. According to Rep. Rotundo, IGPAC has limited authority or power in the development and negotiation of trade agreements. However, Rep. Sharon Treat serves as a member of IGPAC and is an excellent resource to the CTPC and serves the invaluable purpose of relaying the positions and concerns of the commission.

The CTPC has continually advocated for ways to increase participation in matters of international trade. Rep. Rotundo stated that the CTPC has been a model for other states that have formed similar commissions which share the common belief that states should have a say if they are to be impacted by trade agreements and that states should be allowed to opt out of these agreements as well. The following are some of the goals shared by states who have similar entities to the CTPC:

- Greater transparency in trade negotiations
- Greater information sharing
- Allowance of time necessary for deliberation and consideration
- Data sharing

- Greater provision of legal analysis regarding the impact of trade agreements on state's laws
- Acknowledgement and respect of state sovereignty

In response to the question, "How has the CTPC sought to address these goals?" Rep. Rotundo explained about successfully reaching out to the USTR (former) and inviting her to a meeting to develop a system of communication. The fact that the meeting that to be held was required by Maine law to be a public meeting, proved to be a sticking point for the USTR. Ultimately, that hurdle was overcome and the meeting was held.

Additionally, the commission has regularly sent letters to the President of the United States and the USTR. The CTPC has joined with other states in order to amplify our voices in the trade arena.

The CTPC also worked to pass legislation that requires legislative approval of trade agreements and prohibits a state official from binding the state in matters of trade. This bill (LD 1257 An Act to Require Legislative Consultation and Approval Prior to Committing the State to Binding International Trade Agreements – 2009 P.L. c. 385) was passed during the First Regular Session of the 124th Legislature.

Rep. Rotundo also cited legislation that did not go forward that requires trade disputes be handled within the state if the alleged violation was made by the state. This did not go forward because the membership of the CTPC was changing and new members did not have the opportunity to weigh in on this legislation in time.

The 125th Legislature also passed a Resolution urging the Federal Government to improve the process of trade policy development to include consultation between the Federal Government and the States that increase transparency, promotes information sharing and acknowledges state sovereignty. (House Paper # 1152).

Rep. Sharon Treat (by phone):

As a member of IGPAC, Rep. Treat stated that she does have the ability to convey the positions and concerns of the CTPC to the USTR to and the greater community involved with international trade. She stated what would make it easier for her to communicate on behalf of Maine as a member of IGPAC would be to know the CTPCs position on certain agreements in advance. Timing is an issue because there is such a small window of time to respond when information on the pending agreements is made available. Much information that she is given is secret and she is prohibited from sharing it – but if the commission has anticipated what may be covered in a pending agreement and provides a written position on it, she can relay that to the USTR. She noted the challenges of accomplishing this because you can't always anticipate what is on the table.

The CTPC has been helped by the "leaking" of text of certain parts of the TPPA (Trans Pacific Partnership Agreement) and the U.S. positions on these parts of the developing treaty. Rep. Treat is given an opportunity to comment, but it's unclear what happens with her comments after they are given.

With regard to the TPPA, Rep. Treat stated that the developers are looking back on the Korea agreement and using that as a template. This may be helpful to the CTPC in forming policy statements. Rep. Treat then cited issues currently being discussed as part of the TPPA that may be of concern to Maine and the U.S., such as sanitation requirements in food shipment and preparation and the prohibition of technical barriers on trade.

Rep. Treat informed the commission that many countries (possibly 20) are looking to join in on the TPPA, including Canada. So, it's important to be involved and aware of the development of this trade agreement. The dispute mechanism for alleged violation of the trade agreement is particularly important. A serious concern is the standing of foreign corporations as nation states when they feel harmed by a country that is party to the agreement.

Under TPPA it is likely that the least regulating standard is what will govern parties to the agreement. The United States (and possibly individual states) could be vulnerable to trade violations if our regulations are higher or stricter. A practical example of this means that Korea could be the standard in food sanitary practices and regulations and Japan the standard on pharmaceuticals.

Wade Merritt

Mr. Merritt discussed his role as the Vice President of the Maine International Trade Center. Although they may communicate with the USTR, the United States Department of Commerce (DOC) is the primary agency with whom they work. One recent accomplishment is a long-awaited memorandum of understanding with the DOC acknowledging that states have a role in export promotion. The Maine International Trade Center was founded in 1996 and has offices in Portland and Bangor. Some of the primary functions of the center are:

1. International Trade consulting – working with manufacturers in the state establishing or expanding their international trade;
2. Educational programs(Portland, Lewiston and Bangor) where they bring in established trading companies to talk to smaller companies or those new to trade share their expertise;
3. Overseas activities and trade missions – This November the center is going to Brazil and Chile with 12 companies on the annual trade mission. This year Governor LePage is not travelling with them this year- but typically they are joined by whoever is serving as Governor;
4. The Center has launched foreign investment initiatives to encourage foreign investments in Maine. Composites and renewable energies are at the forefront currently; and
5. Attracting international students to Maine.

MITC wants to be a resource to companies interested in trade, the CTPC and other interested parties. They are limited in what they can do with data analysis regarding trade because there is little data that is made available to them. They have good information about what is being exported out of the state but less about imports and services. They recognize the importance of good data for analysis and have been pushing federal agencies for better access to that information. Imports can be easily documented, but where they go once they enter the country is more difficult to know, particularly when documenting consumer goods.

Mr. Merritt indicated that MITC tries to be a resource to companies with trade rules as they currently exist. But, because they are a non-profit they are prohibited from lobbying and do not make efforts to influence the development of trade rules.

Mr. Merritt noted that MITC has had a longstanding relationship with CTPC. Mr. Merritt himself has regularly served on the commission and been involved with it since its inception.

At one point it was decided by the CTPC and the Governor's office (Baldacci) that MITC would be the single point of contact for the USTR to communicate with the state. This worked well for a time but that mechanism for communicating has ceased. They expect that information is going through the Governor's office, and they have a good contact there. So, it could be the case that there is no communication from the USTR coming through.

Mr. Merritt closed by saying that the CTPC has garnered the attention of the trade community in Washington D.C. They are aware that we stay up to speed on trade issues. This awareness keeps them on their toes.

Recent developments regarding the Transpacific Partnership Agreement –Pharmaceuticals and general issues regarding regulatory provisions

Representative Sharon Treat (by phone):

Rep. Treat discussed via conference call, the issue of pharmaceutical regulations in developing Transpacific Partnership trade agreement (TPPA). She made a point to note that there are many other provisions that are of concern with the TPPA, such as intellectual property. But with regard to medicines- there could be problems with getting generic drugs to the market and controlling the escalation of prices in the market. One of the best tools for accomplishing that, which has been a goal of Maine and the United States, is better access to generic drugs.

The intellectual property provisions that have been leaked are similar to what is currently law. However, there are current investigations going on regarding abuses of the current process for the introduction of generic drugs into the market place like "pay to delay." If we sign on to these provisions, the U.S. may be unable to change the intellectual property laws that govern medicines and the release of generic alternatives to name-brand prescription drugs without threat of trade violations.

Other provisions in the TPPA proposed text that has been leaked could have a direct impact on the pricing of medicines and how much programs like Maine Care may have to pay for them. The USTR has added a footnote to its comments on these portions of the developing agreement (Annex on Transparency and Procedural Fairness for Healthcare Technologies). The footnote states that the provisions should not apply to Maine Care because it is a regionally implemented program and the TPPA is proposed to only deal with centrally administered programs. However, Rep. Treat noted, we all know that Maine Care is administered on both the state and federal level. Additionally, even though the footnote was made, there is no assurance that this carve-out will actually be incorporated into the agreement. New Zealand, a party to the TPPA, will be a primary player in this topic of negotiation because of their low-cost drug program. If they sign on they want assurance that the U.S. will enter into a reciprocal relationship. According to comments by Rep. Treat, this is not something that the U.S. should agree to - but instead of this fact keeping them from signing on to the agreement- the U.S. may rely on this footnote as justification to sign

on to the agreement. Relying on the footnote may not provide the U.S. with the protection it needs to administer drug programs that allow for the negotiations of drug prices.

Regulatory provisions of the TPPA and the potential implications for domestic regulation.

Professor Bob Stumberg (by phone:)

Professor Stumberg noted two chapters that are expected to be included in the TPPA which address issues that do not exist in other US trade agreements, state-owned enterprises and regulatory coherence. The chapter on state-owned enterprises has not been leaked yet but could potentially impact public utilities. Commission members note that this should be considered as an agenda item at a future meeting.

The chapter being proposed in the TPPA that deals with regulatory coherence has been leaked. In this draft it is only intended to apply to national or federal governments. But its structure could be used as a model if the regulatory coherence provisions are ever applied to state governments.

According to Professor Stumberg, the proposed chapter requires governments to create a body that assesses regulatory coherence. Guidelines established in the trade agreement would instruct how to conduct regulatory impact assessments (RIAs). Similar assessments are currently executed through the Office of Management and Budget at the federal level in the U.S. These assessments are basically cost-benefit analyses which make a broad swath and are conducted for any significant measure that affects trade. They can be controversial because the analysis may support trade challenges brought against the U.S. by other countries (or investors).

Regulation of tobacco is an issue to watch as the TPPA develops. This product, though highly regulated and controversial, has been treated like any other with regard to trade agreements. Corporations have been filing claims, just as a nation-state would using the investor protection provisions in trade agreements. These corporations are supporting the regulatory coherence provisions to challenge tobacco controls in member countries. There appears to be a deliberate effort to use these trade agreements to undo and undercut tobacco controls and regulations with the ultimate focus trained on the United States. Public health organizations in the U.S. are aware of this trend and are pursuing efforts to carve tobacco out of the trade protections provided to products under these trade agreements.

Professor Stumberg ended his comments by stating that CTPC is known for the tough questions that it poses in its communications to the USTR. Those communications are received and heard world-wide. The comments from the CTPC are a departure from what is typically presented to the USTR.

A local perspective – supporting border towns Calais and St. Stephen.

Diane Barnes and John Ferguson:

The commission invited the town manager of Calais (Barnes) and the Chief Executive Officer of St. John, New Brunswick (Ferguson) to talk about the relationship between the two communities and the unique perspective they have as border towns. They discussed the economic effects felt in one community from developments in the other despite the national border between them.

Jointly, they focus on ensuring that their communities are supported to ensure that their citizens maintain their liberties without losing sight of the security measures that are necessary when

sharing a border. That said, they noted that they are not on the U.S. – Mexico border and they shouldn't be viewed that way. Security measures should be viewed differently.

The towns have worked out ways to have a successful mutual aid agreement for fire protection. They have a cross-enrollment program with the community colleges in St. Stephen and Calais. The towns have been proactive in addressing concerns that the border may pose. Both stated that if there are good benefits to the people of these communities when they cross the border, it is possible to find ways to take advantage of them and respect the border.

Trade Adjustment Assistance Program

Judy Pelletier, Maine Department of Labor– TAA program administrator:

Judy Pelletier spoke to the commission about the administration of the Federal Trade Adjustment Assistance program. The program's purpose is to mitigate the negative impacts to workers who have lost their jobs to overseas workers because of the passage of trade agreements.

Ms. Pelletier spoke to the commission about the administration of the TAA program, including outreach, training, job searches and the distribution of funds from the program for things like wage adjustment, job-search costs and relocation cost reimbursement. Ms. Pelletier provided a useful hand-out that provided information about the program including who is eligible and how it is administered. The hand out may be viewed on the commission's website.

Assessment of the impacts of international trade agreements on Maine **Commission discussion**

Every two years the CTPC is required by statute to conduct an assessment of the impacts of international trade agreements. Maine Revised Statutes Annotated Title 10, §11, sub-§9, ¶C, states that the commission:

C. Shall every 2 years conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment. The assessment must be submitted and made available to the public as provided for in the annual report in paragraph D;[.]

The Commission discussed briefly two potential ideas for an assessment topic that were listed on the meeting agenda. The first would have had the commission look at the dollar value, volume and number of exports leaving Maine during 2009-10 compared with a time when the U.S. dollar was similarly valued. Another idea was to follow-up on some of the items listed at the end of the last assessment completed by the commission.

The commission, referring comments on the developing Transpacific Partnership Agreement at the September and November meetings, also briefly discussed the potential of using this important trade development as the focus of its next assessment. Commission members cited the idea that it would be useful to have an assessment that is more proactive in providing a statement on a trade agreement that is still in the works. An assessment on this topic could be a useful educational tool to Maine policy makers at the state and federal level and even inform those outside the state.

As the meeting came to end, the commission decided that it needed more information to decide on a topic for the bi-annual assessment and would continue the discussion at its next meeting.